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Attorneys for Defendant JOSE HUIZAR

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

MAYRA ALVAREZ,

Plaintiff,

vs.

JOSE HUIZAR, an individual; CITY OF LOS
ANGELES, a municipality; and DOES 1-10,
inclusive,

Defendants.

Case No. 18STCV01722

[Assigned for All Purposes to:
Hon. Richard E. Rico, Dept. 17]

**DEFENDANT JOSE HUIZAR'S NOTICE
OF MOTION AND MOTION TO STAY
ALL PROCEEDINGS PENDING
RESOLUTION OF CRIMINAL
INVESTIGATION; MEMORANDUM OF
POINTS AND AUTHORITIES**

[Filed concurrently with Declarations of
James H. Demerjian and Mary Carter
Andrues]

RESERVATION NO.: 910494920888

Date: June 24, 2019

Time: 8:30 a.m.

Dept.: 17

Action Filed: October 22, 2018
Trial Date: None Set

TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD,

PLEASE TAKE NOTICE that, on June 24, 2019 at 8:30 a.m., or as soon thereafter as the
matter may be heard in Department 17 of the above-entitled Court, located at 111 N. Hill St., Los
Angeles, California 90012, Defendant JOSE HUIZAR ("Defendant Huizar") will and hereby does,

602447.1

**DEFENDANT JOSE HUIZAR'S NOTICE OF MOTION AND MOTION TO STAY ALL PROCEEDINGS
PENDING RESOLUTION OF CRIMINAL INVESTIGATION**

BALLARD ROSENBERG GOLPER & SAVITT, LLP
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ENCINO, CALIFORNIA 91436

1 move the Court for an order staying all proceedings in this civil action brought by Plaintiff Mayra
2 Alvarez until the criminal investigation initiated against Defendant Huizar and others by the United
3 States Attorney's Office for the Central District of California and Federal Bureau of Investigation is
4 resolved.

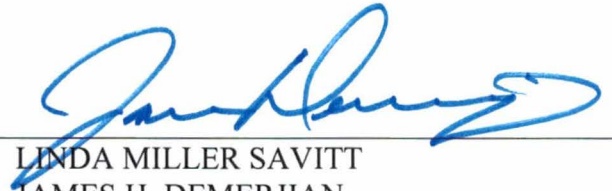
5 With such an investigation pending, a stay of this civil action is necessary to protect
6 Defendant Huizar's constitutional rights in connection with the pending criminal investigation which
7 arises from the same or similar underlying facts as in this civil action.

8 This Motion is based on this Notice, the accompanying Memorandum of Points and
9 Authorities, the Declarations of James H. Demerjian and Mary Carter Andruess, the papers and
10 records on file herein, and on any oral argument and documentary evidence as may be presented at
11 the hearing on this Motion.

12 DATED: May 24, 2019

BALLARD ROSENBERG GOLPER & SAVITT, LLP

13
14 By:



LINDA MILLER SAVITT
JAMES H. DEMERJIAN

Attorneys for Defendant JOSE HUIZAR

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Jose Huizar ("Defendant Huizar"), an elected member of the Los Angeles City Council, respectfully requests this Court to stay this civil action as a result of an ongoing criminal investigation by the U.S. Attorney's Office for the Central District and the Federal Bureau of Investigation. There appears to be significant overlap between the scope of the criminal investigation and the allegations that plaintiff makes in her complaint. In such cases, a stay of the civil action is not only permitted, but is imperative. If this civil action is not stayed, Defendant Huizar's Constitutional rights against self-incrimination will be undermined. Protecting Defendant Huizar's Constitutional rights is paramount. There is no prejudice to Plaintiff, whose claims will be preserved. Accordingly, this civil action should be stayed.

II. STATEMENT OF RELEVANT FACTS

Defendant Huizar is an elected member of the Los Angeles City Council representing District 14. His district covers central Downtown Los Angeles, as well as Boyle Heights, El Sereno, Hermon, Monterey Hills, Highland Park, Eagle Rock, and Glassell Park. Defendant Huizar was elected on November 8, 2005.

Plaintiff Mayra Alvarez ("Plaintiff") filed her complaint on October 22, 2018 against her former employer, Defendant City of Los Angeles ("Defendant City"), and Defendant Huizar. Plaintiff alleges she was employed by Defendant City as the executive assistant in Defendant Huizar's City Hall office. As the executive assistant, Plaintiff alleges she was the "gatekeeper" to Defendant Huizar. (Complaint ¶ 2). Plaintiff alleges she experienced harassment, discrimination, and retaliation on the basis of her pregnancy and based on alleged complaints, and as a result, alleges she was constructively terminated in July 2018. (Complaint ¶ 12).¹ Plaintiff makes allegations of conduct by Defendant Huizar which she believed to be and reported as illegal activity during her

¹ Plaintiff's former colleague, Pauline Medina, has also filed her own lawsuit against City of Los Angeles and Defendant Huizar (Case No. 18STCV03011) in which she makes similar overlapping allegations regarding whistleblower complaints. Plaintiff Medina is represented by the same attorney representing Plaintiff Alvarez. Defendant Huizar has filed a motion to stay all proceedings in the Medina matter as well, and that motion is scheduled to be heard on June 20, 2019. (Declaration of James H. Demerjian).

1 employment. First, Plaintiff alleges Defendant Huizar directed her to “alter his calendars” for the
2 years 2015 and 2016 and remove certain meetings he did not want to disclose to the LA Times.
3 Plaintiff alleges she believed this was illegal and that she voiced her concern to Defendant Huizar’s
4 Chief of Staff (Paul Habib) and Communications Director. Plaintiff alleges these meetings “often
5 followed close in time by donations to Huizar's campaign coffers.” (Complaint ¶ 7). Secondly,
6 Plaintiff alleges that she “voiced her concern” with regard to “potential legal and ethical violations”
7 with respect to “the candidacy of Huizar's wife, Richelle Huizar, for his seat on the City Council.”
8 Plaintiff alleges this anticipated campaign was being conducted on “City's time and dime,” and with
9 the use of City staffers. Plaintiff alleges she believed this was in violation of local, state, and federal
10 laws. (Complaint ¶ 8). Plaintiff alleges that Defendant Huizar and Defendant City retaliated against
11 her for making these alleged whistleblower complaints.

12 On or about November 7, 2018, a federal search warrant was executed by the FBI at the
13 personal residence of Councilman Huizar. The same day, federal search warrants also were executed
14 by the FBI at Councilman Huizar’s Offices. Based on newspaper articles and media reports, the
15 search warrants appear to be part of an ongoing, and far-reaching, federal criminal and ethics
16 investigation of elected officials, lobbyists, political action committees, and those doing business in
17 the City of Los Angeles. No one has been arrested or charged in connection with the investigation.
18 (Declaration of Mary Carter Andruess).

19 Since filing her lawsuit, Plaintiff has served Defendant Huizar with a tremendous amount of
20 discovery, including, but not limited to, 83 requests for admissions (along with the corresponding
21 form interrogatory no. 17.1) and 187 requests for production of documents. Many of Plaintiff's
22 discovery requests relate to her allegations and overlap with the investigation, and therefore,
23 Defendant Huizar respectfully requests a stay.

24 **III. ARGUMENT**

25 **A. This Court has authority to stay this civil proceeding in the interest of justice,** 26 **particularly with a concurrent criminal investigation pending**

27 The Court has broad power and ample discretion to stay an action in the interest of justice.
28 *Landis v. N. A. Co.* 299 U.S. 246, 254 (1936) (holding “the power to stay proceedings is incidental

1 to the power inherent in every court to control the disposition of cases on its docket with the
2 economy of time and effort for itself, for counsel, and for litigants"); see also *U.S. v. Kordel* 397
3 U.S. 1, 12, fn 27 (1970) (noting that a stay is appropriate "When the interests of justice seem[] to
4 require such action") (citations omitted). This broad discretion must be exercised when a civil action
5 overlaps with a criminal proceeding or investigation. Thus, "when both civil and criminal
6 proceedings arise out of the same or related transactions, an individual is *entitled* to a stay of
7 discovery in the civil action until disposition of the criminal matter." *Pacers, Inv. v. Superior Court*
8 (1984) 162 Cal.App.3d 686, 690 (holding a stay of approximately seven years was warranted
9 because "*protecting a party's constitutional rights is paramount*" and outweighed any
10 inconvenience and delay other parties may endure). (Emphasis added).

11 There is significant overlap among the allegations made in this case, and the matters being
12 investigated by the U.S. Attorney's Office and the FBI. Forcing Defendant Huizar to choose
13 between silence to avoid self-incrimination and mounting an effective defense in this case is an
14 impermissible penalty neither Plaintiff nor this Court can impose. See *Spevack v. Klein* 385 U.S.
15 511, 515 (1967) [prohibiting a court from forcing a party to choose between silence and "a
16 meaningful chance of avoiding the loss through judicial process of a substantial amount of
17 property"]. The fact that Defendant Huizar is not a criminal defendant does not change the analysis.
18 *Pacers, supra*, 162 Cal.App.3d at 691 (finding "although petitions are not criminal defendants, they
19 are nevertheless threatened with criminal prosecution" and still share the same interest in staying
20 the civil proceeding). "To invoke the privilege, a witness need not be guilty of any offense; rather,
21 the privilege is properly invoked whenever the witness' answer 'would furnish a link in the chain of
22 evidence needed to prosecute' a witness for a criminal offense." *People v. Cudjo* (1993) 6 Cal.4th
23 585, 617.

24 **B. A stay of this proceeding is necessary to protect Defendant Huizar's**
25 **Constitutional rights**

26 Both the California and United States Constitutions include a provision that no person may
27 be compelled in any criminal case to be a witness against himself. United States Constitution, Fifth
28 Amendment; California Constitution, Article I, § 15. The Constitutional privileges against self-

1 incrimination is also codified in California Evidence Code § 940, which excludes from discovery
2 information which may tend to incriminate a party. Section 940 provides as follows: "To the extent
3 that such privilege exists under the Constitution of the United States or the State of California, a
4 person has a privilege to refuse to disclose any matter that may tend to incriminate him." The
5 privilege against self-incrimination has been given broad application; it can be asserted "in any
6 proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory..." *Kastigar*
7 *v. United States* 406 U.S. 441, 444 (1972). The privilege can be asserted also by civil defendants
8 who face possible criminal prosecution based on the same facts as the civil action. *Pacers, supra*,
9 162 Cal.App.3d at 690.

10 Privileged matters thus lie beyond the reach of discovery and trial courts may not compel
11 individuals to make responses that they reasonably believe could tend to incriminate them or subject
12 them to criminal prosecution. *Fisher v. Gibson* (2001) 90 Cal.App.4th 275, 285. Courts recognize
13 the dilemma faced by a defendant who must choose between defending a civil litigation matter by
14 providing testimony that may be incriminating on the one hand, and losing the case by asserting the
15 Constitutional right and remaining silent, on the other hand. *Fullen v. Superior Court* (2001) 87
16 Cal.App.4th 299, 306. "Where...a defendant's silence is constitutionally guaranteed, the court
17 should weigh the parties' competing interests with a view towards accommodating the interests of
18 both parties, if possible." *Pacers, supra*, at 690.

19 The decision whether to stay civil proceedings in the face of a criminal proceeding should
20 be made "in light of the particular circumstances and competing interests involved in the case." *Fed.*
21 *Sav. and Loan Ins. Corp. v. Molinaro* 889 F.2d 899, 902 (9th Cir. 1989). Accordingly, the Court
22 should consider "the extent to which [the moving party's] Fifth amendment rights are implicated."
23 *Id.* Additionally, the Court should assess: (1) the Plaintiff's interest in proceeding expeditiously
24 with the civil litigation; (2) the burden which the continued civil proceeding might cause the
25 defendant; (3) the Court's interest in judicial economy; (4) the interests of non-parties to the civil
26 litigation; and (5) the public interest in the pending civil and criminal litigation. *Keating v. Office*
27 *of Thrift Supervision* 45 F.3d 322, 324-345 (9th Cir. 1995); *Avant! Corp. v. Superior Court* (2000)
28 79 Cal.App.4th 867, 885.

1 Here, Defendant Huizar's Fifth Amendment right against self-incrimination is certainly
2 implicated by this civil proceeding. Plaintiff alleges in this lawsuit that she witnessed and
3 complained about various violations of local, state, and federal laws. The allegations she makes in
4 her complaint directly overlap with the ongoing investigation. (Declaration of Mary Carter
5 Andruess). Plaintiff's claims of whistleblower retaliation likely "spring from the same nucleus of
6 facts" as the pending criminal investigation. See *Cont'l Ins. Co. v. Cota* WL 4298372 at *2 (N.D.
7 Cal. 2008); see also *ESG Capital Partners LP v. Stratos* 22 F.Supp.3d 1042, 1046 (C.D. Cal. 2014)
8 (finding a party's Constitutional rights clearly implicated when both civil and criminal cases were
9 based on the same set of facts). Though Defendant Huizar affirms the claims in this case are
10 baseless, any response he makes could constitute a statement that can incriminate him in the criminal
11 investigation. (Declaration of Mary Carter Andruess). Moreover, to mount an effective defense in
12 this action, Defendant Huizar must engage in meaningful discovery which includes depositions,
13 requests for admissions, interrogatories, etc. – all of which can incriminate him in the criminal
14 investigation.

15 The precise scope of this investigation may be unknown, but the apparent overlap between
16 the two proceedings is more than enough to stay this action. Indeed, the mere possibility that
17 Defendant Huizar's rights might be adversely affect given the factual similarities between this case
18 and the matters in which Defendant Huizar is being investigated warrant a stay. See *Neman Fin.,*
19 *L.P. v. Citigroup Global Markets, Inc.* WL12837640 at *5 (C.D. Cal. 2015) (granting litigant's
20 motion to stay even though the extent that litigant's Fifth Amendment Rights would be implicated
21 was unclear. Moreover, all of the *Keating* factors also favor a stay.

22 **1. Plaintiff's interest in expeditiously adjudicating this action is outweighed**
23 **by the significant prejudice that Defendant Huizar faces**

24 Any inconvenience that Plaintiff may claim she will suffer from a stay pales in comparison
25 to the proverbial "rock and a hard place" that Defendant Huizar faces. On the one hand, by remaining
26 silent and refusing to produce information that could be used against him in a criminal investigation,
27 Defendant Huizar risks defaulting in this matter or otherwise impairing his defense. On the other
28 hand, by speaking and mounting an effective defense, Defendant Huizar risks potentially

1 incriminating himself in the ongoing investigation. Further, any evidentiary prejudice Plaintiff
2 might incur because of a stay is mitigated by the fact that the investigation likely involves many of
3 the same witnesses and evidence. See *McCormick v. Rexroth* WL934242 at * 3 (N.D. Cal. 2010).

4 **2. Proceeding with this civil action severely burdens Defendant Huizar**

5 As described above, proceeding with this case will force Defendant Huizar to choose
6 between exercising his Fifth Amendment right to remain silent at the risk of default or waiving his
7 right at the risk of incriminating himself. It is axiomatic that deprivation of a Constitutional right
8 causes irreparable injury. See *Citicorp Serv. Inc. v. Gillespie* 712 F.Supp.749, 753-754 (N.D. Ca.
9 1989) (noting various courts have presumed irreparable harm from an alleged violation of
10 Constitutional rights, and listing cases); see also *Nelson v. Nat'l Aeronautics and Space Admin* (530
11 F.3d 865, 882 (9th Cir. 2008) (holding that "constitutional violations cannot be adequately remedied
12 through damages"). Accordingly, proceeding with this action severely burdens Defendant Huizar.

13 **3. The convenience of the Court weights in favor of a stay**

14 Staying this case makes efficient use of judicial resources by insuring that common issues
15 of fact will be resolved and civil discovery will proceed unobstructed by concerns of self-
16 incrimination. Indeed, Defendant Huizar cannot be expected to engage in meaningful discovery
17 when Plaintiff's meritless claims of harassment and whistleblower retaliation appear to be related
18 to the scope of the criminal investigation. Moreover, if the court denies this motion, each round of
19 discovery to or deposition of Defendant Huizar or any related witness will require a new piecemeal
20 discovery motion for protective order and/or to compel responses. Further, the investigation likely
21 may implicate Plaintiff, who also cannot participate in this action without placing her Constitutional
22 rights in jeopardy as well. Finally, this case is in its infancy. Accordingly, this Court will not be
23 inconvenienced by a stay.

24 **4. The interests of non-parties in this civil action (if any) favor a stay**

25 Defendant Huizar is not aware of any third parties adversely affected by a stay. Instead,
26 third party interests will be protected by implementing a stay in the anticipated event that there is
27 overlap between witnesses regarding Plaintiff's allegations as well as in the criminal investigation.
28 The interest of non-parties will not be affected by a stay.

1 **5. Public interest favors a stay**

2 The public has a strong interest in "ensuring that the criminal process is not subverted" by
3 ongoing civil cases. *Bridgeport Harbor Place I, LLC v. Ganim* 269 F.Supp.2d 6, 10 (D. Conn.
4 42002). Further, the public has an unparalleled interest in ensuring a person's Constitutional rights
5 are protected. Here, absent a stay, Defendant Huizar will be forced to answer and provide
6 information which may be used to incriminate him in a concurrent criminal investigation.
7 Conversely, a stay would promote the public interest by providing Defendant Huizar a meaningful
8 opportunity to exercise his Constitutional rights and present a full and complete case in the civil
9 action. A stay of the civil proceedings is also warranted in light of the high-profile public nature of
10 the criminal investigation. As identified by the court in *Keating*, "[i]n highly publicized cases, such
11 as the one at hand, judicial and quasi-judicial decision makers need to be especially careful that
12 undue consideration is not given a proceeding's impact on the public. Government entities are
13 frequently aware of the need to reassure the public that they are taking prompt action in response to
14 a crisis. In such high visibility situations, it is especially necessary to guard the rights of defendants,
15 and concern for the public deterrence value of an enforcement proceeding must not be allowed to
16 override the individual defendant's due process rights. *Keating, supra*, 45 F.3d at 326.

17 **IV. CONCLUSION**

18 For the foregoing reasons, Defendant Huizar respectfully requests this Court to stay this civil
19 action until the criminal investigation by the U.S. Attorney's Office and the FBI is completed so that
20 his Constitutional rights are adequately protected.

21 DATED: May 24, 2019

BALLARD ROSENBERG GOLPER & SAVITT, LLP

22
23 By: 

24 LINDA MILLER SAVITT
25 JAMES H. DEMERJIAN

26 Attorneys for Defendant JOSE HUIZAR
27
28

PROOF OF SERVICE

Alvarez v. Huizar, et al.
LASC Case No. 18STCV01722

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 15760 Ventura Boulevard, Eighteenth Floor, Encino, CA 91436.

On May 24, 2019, I served true copies of the following document(s) described as **DEFENDANT JOSE HUIZAR'S NOTICE OF MOTION AND MOTION TO STAY ALL PROCEEDINGS PENDING RESOLUTION OF CRIMINAL INVESTIGATION; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties in this action as follows:

Terrence Jones, Esq.
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Attorney for Defendant City of Los Angeles

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List. I am "readily familiar" with Ballard Rosenberg Golper & Savitt, LLP's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Encino, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 24, 2019, at Encino, California.


Lisa Chiarella



Journal Technologies Court Portal

Court Reservation Receipt

Reservation

Reservation ID:
910494920888

Status:
RESERVED

Reservation Type:
Motion for Stay of Proceedings

Number of Motions:
1

Case Number:
18STCV01722

Case Title:
MAYRA ALVAREZ vs JOSE HUIZAR, et al.

Filing Party:
Jose Huizar (Defendant)

Location:
Stanley Mosk Courthouse - Department 17

Date/Time:
May 13th 2019, 8:30AM

Confirmation Code:
CR-DXEPDBTUXZMTYK6Z7

Fees

Description	Fee	Qty	Amount
Motion for Stay of Proceedings *** Fees Exempted by Gov Code 6103.1 ***	60.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
GOVT_EXEMPT

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Court Reservation Receipt

Reservation

Reservation ID:
910494920888

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Motion for Stay of Proceedings

Case Number:
18STCV01722

Filing Party:
Jose Huizar (Defendant)

Date/Time:
June 24th 2019, 8:30AM

Status:
RESERVED

Number of Motions:
1

Case Title:
MAYRA ALVAREZ vs JOSE HUIZAR, et al.

Location:
Stanley Mosk Courthouse - Department 17

Confirmation Code:
CR-J5K8PAGDK6NYPGV8K

Fees

Description	Fee	Qty	Amount
Reschedule Fee *** Fees Exempted by Fee Waiver ***	20.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
FEE_WAIVER

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